

**MINUTES**

**MONTANA SENATE  
58th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON FINANCE AND CLAIMS**

**Call to Order:** By **CHAIRMAN TOM ZOOK**, on March 7, 2003 at 8:00  
A.M., in Room 317 Capitol.

**ROLL CALL**

**Members Present:**

Sen. Tom Zook, Chairman (R)  
Sen. Bill Tash, Vice Chairman (R)  
Sen. Keith Bales (R)  
Sen. Gregory D. Barkus (R)  
Sen. Edward Butcher (R)  
Sen. John Cobb (R)  
Sen. Mike Cooney (D)  
Sen. John Esp (R)  
Sen. Royal Johnson (R)  
Sen. Rick Laible (R)  
Sen. Bea McCarthy (D)  
Sen. Linda Nelson (D)  
Sen. Trudi Schmidt (D)  
Sen. Debbie Shea (D)  
Sen. Corey Stapleton (R)  
Sen. Emily Stonington (D)  
Sen. Joseph (Joe) Tropila (D)

**Members Excused:** Sen. Bob Keenan (R)  
Sen. Jon Tester (D)

**Members Absent:** None.

**Staff Present:** Prudence Gildroy, Secretary  
Taryn Purdy, Legislative Branch

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing & Date Posted: HB 42, 1/9/2003; HB 636, 2/26/2003  
HB 272, 1/15/2003; HB 471,  
2/24/2003;

Executive Action:

HEARING ON HB 42

Sponsor: REP. DEBBIE BARRETT, HD 34, Dillon

Proponents: Elaine Mann, Broadwater County Commissioner  
Harold Blattie, MACO  
Donna Sevalstad, Beaverhead County Commissioner  
John Bloomquist, Montana Stockgrower's Association  
Nancy Schlepp, Montana Farm Bureau Federation

Opponents: None

Informational Witnesses:

Jeff Hagener, Department of Fish, Wildlife and Parks

Opening Statement by Sponsor:

REP. DEBBIE BARRETT, HD 34, Dillon, opened on HB 42, a bill to require wildlife management in a sustainable manner. She advised the **Department of Fish, Wildlife and Parks** was created in Montana 102 years ago to restore the wildlife populations and to supervise all of the wildlife in the state. By 1933, the **Montana State Legislature** passed a bill addressing the damage done to private land by increasing elk populations. In 1943, the **Montana State Legislature** passed a bill addressing the damage done to private lands by increasing antelope populations. In 1945, the same legislation was passed for the damage done to private land by moose. In 1947, legislation was passed to address private property damage caused by the state's increasing deer populations. In 1949, the previously mentioned laws were repealed and the state legislature then passed the current game damage laws. There have been 32 pieces of legislation introduced during the last 70 years addressing the damage Montana's increasing game populations have caused and continue to cause landowners throughout the state. **EXHIBIT(fcs48a01)** She claimed the problem is worse today than ever before. HB 42 is not just another attempt to define the damage done to private land in Montana, it addresses all the land in Montana. The bill informs the **Department of Fish, Wildlife and Parks** that today's wildlife populations are too high for the land to sustain them and this is unacceptable. HB 42 states the **Department of Fish, Wildlife and Parks** must manage animals in a sustainable manner and, for the first time ever, she claimed, become good stewards of Montana's land. She worked with the **Montana Association of Counties** for over 18 months to address the game damage issue in Montana. For over 102 years, sportsmen have purchased hunting licenses in

Montana. The license money goes to managing the department. Property owners have no choice in feeding the public's wildlife. She contended this is acceptable up to a certain point, but when the landowner is no longer making a profit from his own land, something must be done. Many areas in Montana are in their fourth year of drought. Agriculture people have been responsible stewards of the land. Over a half million head of livestock left the state prior to 2002 because of the drought seeking pasture in other areas. In 2002, another 300,000 head of livestock left the state. **FWP** has steadily allowed the state's game populations to continue to increase dramatically during the same four years of drought. According to **FWP** studies, elk populations can double in size in two years under certain circumstances. She contended there had just been four years of ideal elk reproducing conditions. Overstocking and overgrazing are wrong and its just as wrong when done by a wildlife agency. HB 42 will insure **FWP** will become good stewards of Montana land.

**Proponents' Testimony:**

**Elaine Mann, Broadwater County Commissioner**, testified she belongs to **MACO** and is on three committees. One thing they discussed was economics. She presented and explained a packet of information including her written testimony, letters from ranchers and landowners and some history. **EXHIBIT (fcs48a02)** She claimed farmers and ranchers are going out of business. She asked if the state can compensate for the economic loss to those folks. She cited the loss to communities and local governments. She thought the counties would gladly pay the survey costs on the fiscal note (2) for agricultural landowners. **FWP** blames the landowners for not allowing hunting. She doesn't understand why they are closing roads for security for the animals during hunting season when the harvest is needed. Property values are lowered due to fence damage from wildlife. She cited statistics stating hunting brings in 5% of tourist dollars and fishing 4%. Other tourists come for the wide open spaces, visiting family and friends, mountains and forests. Without farm land, there won't be open spaces, she contended.

**Harold Blattie, MACO**, advised in times of drought, agriculture reduces herd numbers. **FWP** needs to take steps to reduce their herd numbers in these times of extreme drought. With the drought, there is less forage on public lands. These animals are relocating themselves to where the better feed is and that tends to be on the private land, especially areas that are irrigated. It is not strictly confined to irrigated lands. He referred to an article in the *Great Falls Tribune* about problems caused by antelope in Blaine County. He recalled driving around at his family ranch northwest of Billings at Christmas and seeing more

antelope than he had ever seen on the place. The numbers have exploded due to the mild winters. **FWP** responded with special hunts to try to reduce the numbers in that area. The kids on the ranch didn't feel like spending a day to stand in line for tags so they didn't get to hunt the animals they've been feeding. Antelope take bottom wire, deer take the top wire and elk just take the whole thing all at once.

**Donna Sevalstad, Beaverhead County Commissioner**, testified this is the right thing to do for property owners in Montana.

**John Bloomquist, Montana Stockgrower's Association**, advised the bill talks about assessing available habitat and sustainable populations and managing those populations within that context. He asked for passage of the bill.

**Nancy Schlepp, Montana Farm Bureau Federation**, stood in support of the bill. She thanked **REP. BARRETT** for bringing the bill forward. Nobody wants to see overstocked land, and that includes the wildlife component. HB 42 makes sense economically--helping to bring wildlife and domestic livestock into harmony. It isn't just a drought problem and will go on after the drought. She saw 100 elk mixed in with about 60 antelope on her land. The members of the federation drafted a resolution addressing the issue.

**Opponents' Testimony:** None.

**Informational Testimony:**

**Jeff Hagener, Department of Fish, Wildlife and Parks**, advised the department opposed the original bill in the House but would provide informational testimony on the amended bill as it passed out of the House. He read from written testimony.

**EXHIBIT (fcs48a03)** He advised they supported **REP. JOE BALYEAT'S** bill allowing for a complimentary youth license. **SEN. BILL TASH'S** SB 122 would allow individuals who are still active hunters to shoot two elk in some cases. He gave examples of problems due to un-managed private lands.

**Questions from Committee Members and Responses:**

**SEN. EMILY STONINGTON** asked what changes were made that turned his testimony from opposition to informational.

**Mr. Hagener** advised one of the things in the original bill requires them to assess the carrying capacity only based upon public lands and private lands that have some kind of agreement with the department. It left out all of the other private land in the state. The carrying capacity they were being asked to

assess was only looking at a small segment of where those animals spend time. They didn't think that was appropriate because they have to deal with the overall situation and not just the public lands.

**SEN. STONINGTON** asked where the amendment is in the bill.

**Mr. Hagener** replied page two, line two. Originally, it said "private property owners" and was changed to Montana land. There were other places where the language was more specific.

**SEN. STONINGTON** asked him to explain how new Section four on page three would work.

**Mr. Hagener** advised the statutory appropriation would give them the authority to utilize general license dollars for whatever measures are necessary to carry out the provisions regarding the calculation of habitat and getting numbers down by certain dates. They anticipate hunts will not be successful in a lot of cases and department time will be spent on animal control by killing animals.

**SEN. STONINGTON** asked if he anticipated the department going out and doing all that kill.

**Mr. Hagener** believed that would be necessary to bring the numbers down in many cases because they are not as successful with what they're doing with hunting. In some cases, they will still not be successful because animals will be on various refuges.

**SEN. STONINGTON** asked if they will be doing more helicopter population counts because of the bill.

**Mr. Hagener** stated its hard to do more surveys with the personnel they have. If they increase the amount of surveys and the amount of land, they will be spending quite a little more time doing it.

**SEN. STONINGTON** asked if he went to his subcommittee to ask for more FTEs to do this.

**Mr. Hagener** advised they have not.

**SEN. STONINGTON** inquired about page 14, lines 13-24 and page 15, line 21. She asked if the bill authorizes more non-resident hunters.

**Mr. Hagener** suggested asking the sponsor. It appeared additional licenses were authorized.

**SEN. STONINGTON** asked **REP. BARRETT** if page 15, line 21 authorizes additional non-resident licenses above the quotas in previous law.

**REP. BARRETT** advised it would be up to the department to implement those. It says "provided in sections 1-5 of this bill."

**SEN. STONINGTON** indicated in the past there has been significant debate over resident and non-resident hunters and limiting the number of non-resident hunters. The bill as she read it says if there are management provisions that need additional non-resident hunters to improve the harvest, the commission would be authorized to provide more non-resident hunting licenses.

**REP. BARRETT** replied it could be possible. The line begins with "or" and "if" additional licenses are needed. She stated **Director Hagener** is right; the bill does not give **FWP** any new authority. They have all of the tools they had previously. As a last resort, they could increase non-residents. This changes none of their authority for game management.

**SEN. STONINGTON** advised it may change their authority for non-resident license issues.

**CHAIRMAN TOM ZOOK** advised **Taryn Purdy, Legislative Services**, pointed out with the statutory authority, they don't have to go before a subcommittee.

**SEN. STONINGTON** said she was asking about authority for FTEs to do additional surveying.

**SEN. JOHN COBB** asked about going over 6000. Line 26 on page 15 says they still only get 6000 B-11 licenses. He asked if that is a conflict. Line 21 seems to imply they can go over that.

**Mr. Hagener** contended it gives them, or the commission, authority and additional licenses if authorized pursuant. There may be a conflict where it says they can't exceed the 6000 and that is a legal question.

**SEN. TASH** advised his game damage bill allows for both resident and non-resident. He thought the department has the authority to set those licenses whether resident or non-resident.

**SEN. STONINGTON** advised this is for a full combination license for bulls.

**SEN. LINDA NELSON** noted the bill allows for special hunts, department kills, and surveys. She asked what the bill will require the department to do that they're not doing now.

**Mr. Hagener** read from the bill on page two, line 26, "the department shall insure that populations of deer, elk, and antelope are at or below the sustainable population number by January 1, 2009; and evaluate the elk, deer, and antelope populations on an annual basis and provide that information to the public." At or by January 1, 2009, and thereafter, they are required to bring populations to at or below that number after that number is set.

**SEN. NELSON** asked if they would be doing some surveys prior to that time and then authorizing special hunts if need be. They would have to cover the whole state to assess the population.

**Mr. Hagener** replied the carrying capacity for elk is 200,000 for the state of Montana. They would be looking at specific areas where elk, antelope, or deer herds are. They have some areas where elk and deer populations are below acceptable levels and they would like to bring those up and other places where populations are above. If there is an outbreak of disease or if winter conditions continued for another week or two, they won't have to worry about killing a lot of animals.

**SEN. NELSON** asked if they do much of this already.

**Mr. Hagener** advised they do.

**SEN. BEA MCCARTHY** noted there doesn't seem to be a provision in the bill for a quick response time.

**Mr. Hagener** advised other statutes that deal with game damage require responding to complaints within 48 hours. They have current information about numbers of herds. When there are specific instances of game damage going on, they are reacting to that now.

**SEN. MCCARTHY** asked if there is a report of game damage and there is a 48 hour response time, how quickly can a hunt be called.

**Mr. Hagener** said depending on what kind of hunt is utilized or if its more appropriate for a kill permit, they can respond within a matter of days. For a longer term problem, they use a public drawing situation which takes about two weeks.

**SEN. MCCARTHY** asked if the preference is for a department kill rather than a hunt.

**Mr. Hagener** stated there are several circumstances where a hunt is not going to work. That is where they would be involved--in the middle of a corn field or other situations where its simply not a good place to have hunters.

**SEN. ROYAL JOHNSON** felt ranchers were good hunters themselves. He asked why not find a place for the meat to go, and ranchers could take care of an immediate situation.

**Mr. Hagener** explained they do that currently when they issue kill permits to a landowner. They have circumstances where the landowner does not want to do the killing.

**SEN. JOHNSON** asked **Ms. Schlepp** about the opportunity for kill permits.

**Ms. Schlepp** advised they had not contacted **FWP**. If that situation were to occur, they would want hunters to come in. Any meat the game warden takes goes to the food bank. She mentioned her board is in town and are excited about the bill. **FWP** is told to maximize numbers of game in their rule-making. "Sustainable" would replace "maximize" in the rules.

**SEN. JOHNSON** asked if animals are a problem on her ranch.

**Ms. Schlepp** confirmed they are.

**SEN. KEITH BALES** asked **Mr. Hagener** about his testimony on a bill earlier in the session that the department did not have accurate numbers and just looked at trends.

**Mr. Hagener** believed he testified they do not have exact numbers for every herd and every animal because its impossible to count every animal. They look at trends in areas where there are concentrations of animals during the winter or spring which gives an idea of what's happening with that population. In normal circumstances, animals are more concentrated in those areas during specific times of the year.

**SEN. BALES** believed an elk management plan is currently in place. There was previous testimony that elk numbers are way over those in the elk management plan in many parts of the state. He asked if that was the case.

**Mr. Hagener** advised they testified they are at or above objectives in 60% of the areas they identified elk numbers.



**SEN. BALES** asked why haven't they taken more extreme measures in the past to bring those areas that are over back into line with their own plan.

**Mr. Hagener** advised he could only speak for the two years he had been there. Over that two years, substantial discussions were held before the commission about liberalizing seasons. That is the direction the commission is now going.

**SEN. BALES** asked if the bill is an effort to give the department tools to be able to do that.

**Mr. Hagener** advised they have most of the tools available currently.

**SEN. BALES** asked if this would give them additional tools or make it clear what needs to be done.

**Mr. Hagener** didn't know where the bill specifically gives additional tools. He thought it gives greater emphasis to sustained numbers, tries to bring numbers closer to that and creates some deadlines.

**SEN. BALES** asked about the requirements for land owners regarding kill permits.

**Mr. Hagener** replied the first requirement is they have to allow some measure of public land to qualify under the existing statutes. Once the best method to deal with the animals is determined by the local warden or biologist, the landowner is required to kill and dress the animal and notify the department. The department takes the animal to the local food bank.

**SEN. BALES** asked if the landowner has to do everything. He asked if the department ever kills and dresses the animals.

**Mr. Hagener** advised in some circumstances they do.

**SEN. TRUDY SCHMIDT** asked **Mr. Hagener** to comment on rule-making.

**Mr. Hagener** advised in several rules it talks about maximizing numbers. He could not say what the specific language is.

**SEN. SCHMIDT** asked **Ms. Schlepp** about not contacting the **FWP** Commission.

**Ms. Schlepp** contended they allowed hunting on their ranch this year and, knowing there is a drought, hoped the problem would take care of itself. They felt **FWP** would realize there is a

problem because the animals migrate east through the Castles and the Bighorns.

**CHAIRMAN TOM ZOOK** asked about road closures.

**Mr. Hagener** advised in the cases where its federal land, it is up to the federal government to make decisions on road closures. A good part of the road closures are made for wildlife security. Management authority over those lands or **DNRC** state lands is within those agencies.

**CHAIRMAN ZOOK** asked where they would be involved in road closures.

**Mr. Hagener** advised the only place they are involved is commenting if there is a solicitation for comment about what they are doing in specific areas.

**CHAIRMAN ZOOK** asked about **Mr. Hagener's** testimony regarding providing fences or stack yards. He advised it had been done in his region but only to those landowners who are in block management. He asked if that was the policy of the Commission across the state.

**Mr. Hagener** answered there are statutes involved with game damage. The exact language is something like "public hunting opportunity or "do not do" anything that precludes hunting opportunity."

**CHAIRMAN ZOOK** asked if they were prevented by statute.

**Mr. Hagener** affirmed that is correct. For a landowner that allows no hunting, they are prevented by statute to go in and help.

**SEN. ZOOK** asked if he looked at the bill in terms of multiple use.

**Mr. Hagener** advised they are trying to balance the number of animals on the landscape with landowner tolerance. They do not have control over weather conditions or landowner permission.

**CHAIRMAN ZOOK** advised there is concern the bill could reduce animal units for livestock on forest lands. He asked **Mr. Bloomquist** if he saw any bugaboos.

**Mr. Bloomquist** said he didn't see any bugaboos there because forest block management plans are trying to balance available forage for livestock and wildlife. On forest BLM land, that is

being done anyway. The department, rather than using trends and simply looking at landowner tolerance for a sustainable level, is plugging available forage into the equation. He didn't think there would be more allocated on federal lands for wildlife than for grazing.

**CHAIRMAN ZOOK** advised fewer cattle mean more forage available, theoretically.

**Mr. Bloomquist** stated that is part of the problem in southwest Montana. The forest service looks at allotment and sets a utilization level. Elk come in and the utilization level is met and the cattle don't even go out. That is a reflection of excessive elk numbers. Cattle numbers haven't changed and have even gone down. The forage allocated is taken up by the wildlife before the livestock ever get there. Hopefully, through this bill, **FWP** will be aggressive in getting those elk numbers down to a sustainable level. Maybe this will make no difference, but he hoped it does.

**CHAIRMAN ZOOK** asked if the reverse might happen.

**Mr. Bloomquist** advised he certainly hoped not.

*{Tape: 2; Side: A}*

**Closing by Sponsor:**

**REP. BARRETT** closed on the bill and addressed concerns that had been expressed. Beaverhead Deer Lodge National Forest is currently going through their forest management plan. The stated they will manage wildlife in a sustainable manner from now on and not prioritize elk as they did in the eighties and nineties. The Beaverhead Deer Lodge National Forest and the BLM adopted the 1992 elk management plan, which they helped craft with **FWP**. That's what closed the lands for elk security and closed the roads. She addressed the concerns of **SEN. MCCARTHY** and **SEN. JOHNSON** about timely addressing the damage. Earlier this session there was a bill by **REP. JOHN BRUEGGEMAN** that gave property owners some license and got licenses to people quickly; the department was adamantly opposed to the bill. The stock growers had legislation regarding property owners controlling 10,000 acres or more managing the wildlife in their area. The director of **FWP** opposed the idea in the newspaper so the stock growers did not come forward with that piece of legislation. She refuted remarks made by the director and claimed the increases in wildlife had not been recent, but had been steadily increasing for 70 years. She cited statistics showing what is actually spent to address game damage. In performance audits, the

department has been informed repeatedly to take weather conditions into consideration. They have yet to address the drought, she maintained. The department is coming out with a new elk management plan and have been asked whether they would be opening up roads and public land; the department assured they would be looking at that. She acknowledged the problem with "new age" ranchers who don't allow hunting. The bill will help everybody else, she maintained. She cited various studies, management plans and performance audits. Legislators requested an audit on how **FWP** counts Montana's game populations. Counts are supposed to be annual by statute and they are not. **REP. JOE BALLEAT'S** concern was the one region where elk numbers were declining because of the wolf reintroduction. Her concerns were all the other regions where game populations are going up. The agency has not addressed either concern, she claimed. HB 42 will insure the agency will address and correct both of those problems. The bill will benefit sportsmen, landowners, and bring good stewardship to all the land in Montana.

#### HEARING ON HB 636

**Sponsor:** GARY FORRESTER, HD 16, Billings

**Proponents:** Bob Gilbert, Montana Tow Truck Association  
Leroy Mathews, Montana Tow Truck Association  
Don Cerovski, Montana Tow Truck Association  
Jim Dusenberry, President, Montana Tow Truck Association  
Greg Van Horssen, State Farm Insurance  
Ali Bovingdon, Department of Justice  
Tom McGree, Milo's Towing and Repair

**Opponents:** None

#### **Opening Statement by Sponsor:**

**GARY FORRESTER, HD 16, Billings,** advised in the 1995 session, he brought a tow truck revision bill that corrected and modernized the tow truck act from 1936. HB 636 implements some changes in the rotation system and applies definitions. The bill also creates a complaint resolution committee, specifies the amount of insurance a commercial tow truck operator must carry and allows the highway patrol to charge a fee for inspection.

#### **Proponents' Testimony:**

**Bob Gilbert, Montana Tow Truck Association,** advised the tow truck act hadn't been touched from 1936 until 1995 when they did major revision. There are a few areas that need to be defined such as

a boom as it relates to a tow truck, setting certification or experience standards for qualified tow truck operators, and setting the same standards for individuals. The bill defines a rotation area where a qualified tow truck operator is dispatched and operates and can be called by law enforcement. Various sizes of trucks are defined by class. In 1995, non-commercially manufactured equipment was grand-fathered in that never met the engineering standards for handling a certain amount of weight. Non-commercially manufactured equipment is still allowed in the bill but it has to meet tests. Complaint resolution and issues including towing charges are handled by a complaint resolution committee. The insurance minimum is increased from \$20,000 to \$50,000. Standards are set for fence laws, inspection fees and decals. There is no fiscal note with the bill because adequate fees will be charged for inspections and decals. Meetings of the resolution committee are at no cost to the state. The bill sets up standards for rotations and requirements for signs on truck doors.

**Leroy Mathews, Montana Tow Truck Association**, supported the bill. They favored the door signage on the vehicles so that when the truck shows up, it is the one called for the highway patrol rotation. He advised law enforcement in his area is in favor of it and the tow truck operators are in favor of it.

**Don Cerovski, Montana Tow Truck Association**, spoke to the insurance requirements in the bill. In the past, there was no amount of insurance required for cargo. Requiring insurance defines things for the underwriters. The **Public Service Commission** is the agency that addresses the insurance requirements for the towing industry. His insurance carrier did not fill out certain forms properly which caused a letter to be sent to him. The bill will protect the motoring public and the interest they have in their vehicles.

**Jim Dusenberry, President, Montana Tow Truck Association**, advised the bill addresses problems that arose since the tow truck act was revised in 1994. The tow truck operators of Montana worked very hard on a consensus document to put before the legislature in conjunction with the **Highway Patrol** and all other affected agencies. He submitted letters from tow truckers who could not testify in person; because of the severe weather, they are busy working. **EXHIBIT(fcs48a04)** He described the new rules regarding the rotation system in the bill. He cited the efforts of the **Highway Patrol** in setting up a more fair and equitable rotation system and making it work. The association feels the small rural area tow truck operators are as important as the big ones and one business should have no more rotations than the next.

**Greg Van Horssen, State Farm Insurance**, stated the company supports the bill. Their input involves new Section four on page four. His client considered bringing a bill this session that addressed some disputes that have been occurring regarding charges. They knew that **Mr. Gilbert** and his association and **REP. FORRESTER** had a bill and in his mind they were in conflict. He credited **Mr. Gilbert**, the association he represents, and the sponsor of the bill. They were able to sit down together and amend the language in new Section four in a very narrow way to alleviate the conflict.

**Ali Bovingdon, Department of Justice**, advised the bill will clarify the requirements for tow truck operators who wish to participate in the statewide rotation system. The rotation system is administered by the **Highway Patrol** and these clarifications will assist the patrol in their administration and enforcement responsibilities pertaining to the rotation system. She informed the committee that the fiscal note previously submitted and prepared by the **Montana Highway Patrol** was withdrawn and there will be no fiscal impact related to HB 636. The department supports the bill and hopes the committee will as well.

**Tom McGree, Milo's Towing and Repair**, advised Milo's has been in business in Butte since 1957. Last spring Milo fell ill and just before his passing **Mr. McGree's** family bought the business. He pointed out the efforts of tow truck operators from all over the state. He complimented **Captain Becker, Montana Highway Patrol**, for his efforts at a Billings meeting where issues were being resolved. The bill improves the definitions of equipment and training requirements, clarifies the rotation areas for larger wreckers, certification procedures for equipment, the process by which each tow operator can serve in satellite locations, fencing requirements, and expands the complaint resolution committee. He urged support for the bill.

**Opponents' Testimony:** None.

**Informational Testimony:** None.

**Questions from Committee Members and Responses:**

**{Tape: 2; Side: B}**

**SEN. ESP** asked about the fenced lot requirement for storage or security. He advised in his community, there are five or six tow truck operators and he didn't think any of them had a fenced in lot. He wondered if that is typical of small towns.

**Mr. Mathews** responded that in Livingston there are two tow truck operators and they both have secure fenced lots. Big Timber, in the last couple of years, has quite a few new tow truck operators for some reason. None of those tow truck operators really are up to speed with what will be required. If they are going to be on the rotation system, they will have to step up. He advised a building is also acceptable to fulfill the lot requirement to secure rotation cars when required.

**SEN. ESP** asked about the certification of the operators and drivers and if he thought most of the those in Big Timber are certified.

**Mr. Mathews** believed in Big Timber most of them are. He advised certification is something that is coming on in the industry.

**SEN. ESP** asked if there could be an agreement to use the county impound yard or if each individual towing company would have to provide its own yard under the bill.

**Mr. Mathews** advised tow truck operators can share a yard, but using the county yard would be a gray area. In Livingston, impounds are put in the county yard when they are towed. A rotation car is towed to the tow truck operators yard.

**SEN. ESP** asked if it is clear in the bill that a building qualifies.

**Mr. Mathews** thought it is. Before, a storage yard could be anything.

**SEN. BALES** asked about Carter County and tow trucks coming out of Belle Fourche, South Dakota.

**REP. FORRESTER** advised they would probably have to meet the same licensing procedure and follow the same rules of every tow truck operator in Montana.

**SEN. BALES** asked what provisions are made for certification and would they have to be certified within the state.

**Mr. Gilbert** advised out of state tow truck operators that want to work in the state of Montana will have to follow every requirement including insurance, inspections, certified drivers, and safe storage facilities.

**SEN. BALES** asked if any tow truck operators in North Dakota, South Dakota and Wyoming are certified by the state of Montana.

**Mr. Gilbert** advised there are.

**SEN. MCCARTHY** asked about the rotation system and if the **Highway Patrol**, or whoever is first on the scene of an accident, will inform her, as the person who had the wreck, who is going to pick up her vehicle.

**Mr. Dusenberry** contended they will ask her if she has a preference for towing. If she doesn't have a preference then they will call for a rotation wrecker. That is administered by the **Highway Patrol** and in some areas it is administered by an independent contractor. In Helena, it is Capital Answering Service.

**SEN. MCCARTHY** advised she would like her choice first and **Mr. Dusenberry** said that is the intent.

**SEN. ESP** asked if he broke down between Mocassin and Geyser and there was an uncertified tow truck operator in Mocassin or Geyser and a certified one in Great Falls, can the **Highway Patrol** call the uncertified person that is not on his rotation list.

**Mr. Dusenberry** advised if the tow truck operator is insured with the state and is for hire, the officer can call somebody closer if that is the preference. Anybody that is for hire and advertises in the Yellow Pages has to file an insurance policy with the **PSC** and be inspected. They do not have to be in the rotation to do that.

**SEN. ESP** asked how the **Highway Patrolman** would know and if he would have two lists.

**Mr. Dusenberry** replied he would not have a list. Checking a list might infer preferential treatment. If you request a name, they will call that name.

**Closing by Sponsor:**

**REP. FORRESTER** closed on the bill. He advised the rotation system was established in the previous bill and allows for the **Highway Patrol** to call the next available tow truck operator. It is a fairness system. The insurance requirements have always been there. The **Highway Patrol** will not call anyone who isn't insured. He asked for favorable consideration for the bill.

Recess - 9:45 a.m.

Reconvene - 10:12 a.m.



HEARING ON HB 272

Sponsor: KIM GILLAN, HD 11, Billings

Proponents: Harold Blattie, MACO  
Charles Brooks, Yellowstone County Commissioner

Opponents: None

Opening Statement by Sponsor:

KIM GILLAN, HD 11, Billings, opened on HB 272, a bill to prohibit state offset of county payments. HB 124 altered the flow of funds between local government and the state. HB 124 was based on compromise, financial analysis and communication on how to improve the relationship and make it more efficient. The key element in play when HB 124 was enacted, was trust. Local governments trusted the money would come back when they sent their dollars to the state based on the provisions of HB 124. HB 272 is supported by local governments and particularly the **Montana Association of Counties**. The provisions in the bill on page seven and nine say that if there is a situation where there is a debt between the state and local government, the entitlements addressed in the original HB 124 cannot be used as offset. The bill has no fiscal impact.

Proponents' Testimony:

Harold Blattie, MACO, advised the bill is a policy statement by the legislature. The bill doesn't apply to any payment or taxes but only to the entitlement share. It would not allow a county to avoid paying a legitimate debt to the state. The entitlement share is not all county money. It is also money sent to the county to be distributed to special purpose districts. The bill would not let a county refuse to refund an erroneous overpayment. There was discussion the bill would allow Yellowstone County not to fulfill their obligation of repaying the additional charge for administrative costs for the **DPHHS** public assistance program and that is not the case.

Charles Brooks, Yellowstone County Commissioner, advised this is a fairness issue as far as settling disputes that might arise between the state and counties regarding HB 124. The bill does not involve the \$96,000 that **Commissioner Bill Kennedy** has been carrying in his briefcase and is owed to the state, he assured the committee. They exhausted all opportunities to not pay the \$96,000 and the bill does not deal with that issue.

Opponents' Testimony: None.

**Informational Testimony:** None.

**Questions from Committee Members and Responses:**

**SEN. JOHNSON** noted the incident of the \$96,000 was a timing situation. It was a legitimate claim, the county issued a warrant for that claim, and it is still in the commissioner's pocket. He wasn't sure it could be claimed the bill is not the result of a single incident. He asked why the \$96,000 was not in the state coffers.

**Mr. Blattie** advised the resolution that created the bill came from districts eight, nine and twelve in Southwestern Montana. The resolution did not come from that single incident. He didn't think it appropriate to respond on Yellowstone County's behalf. The bill would prevent the state from making an offset against the entitlement share. There are nine other counties that have not yet paid.

**SEN. JOHNSON** asked him to explain what action the state can take if a county acknowledges they owe the money, writes a warrant, and holds it.

**Mr. Blattie** advised the state can offset any other payments. The bill will simply shield the entitlement share.

**SEN. JOHNSON** directed the question regarding the \$96,000 to **Russ Hyatt, Department of Revenue**.

**Mr. Hyatt** advised he knew of no action taken by the state. The state has the authority to offset and collect any other monies that are entitled to Yellowstone County if necessary. At this point there had been no discussion to pursue that.

**SEN. JOHNSON** asked if he was aware of this several months ago.

**Mr. Hyatt** admitted he was.

**SEN. JOHNSON** asked how long a \$96,000 debt would be let go.

**Mr. Hyatt** knew of no specific criteria or time frames. He thought a concerted effort should be made to get the money from the local government.

**SEN. JOHNSON** advised the local government already wrote a warrant.

**Mr. Hyatt** stated the county fully acknowledges they owe the money to the state and the state is aware they owe the money. He

thought every effort would be made to get the issue resolved without taking legal action or using offsets--the same thing they do with any other delinquent taxpayer or customer they serve.

**SEN. JOHNSON** asked if he was \$96,000 short on his taxes to the state of Montana, how long would it take them to come after him.

**Mr. Hyatt** advised probably not very long.

*{Tape: 3; Side: A}*

**SEN. JOHNSON** asked **Mr. Brooks** to tell the committee the exact location of the \$96,000 check.

**Mr. Brooks** advised the committee the money involves a dispute over administrative charges from **DPHHS**. The additional fee was charged to Yellowstone County after the county prepared their budget. There is a dispute whether the county was notified prior to the preparation of the budget that the additional administrative charges were coming forward. The check was being held so they could come to this legislative session to try to get some relief. The commission's position is the charge was unfair because they received it after their budget was prepared. They sought relief through the legislative process, met with the Governor and **Mr. Chuck Swysgood, OBPP**, and they had a bill progressing through the process that has been defeated. It appeared to them they have exhausted all of the remedies and he had been assured the bill will be paid.

**CHAIRMAN ZOOK** asked if other counties received bills the same way as Yellowstone County. He wondered how they handled their situation.

**Mr. Brooks** stated there were a number of other counties. Yellowstone County had the largest charge, being the largest county. There were ten or eleven other counties and now it was down to six. They were waiting to see what would happen during the legislative process. A number of eastern counties had bills of \$1500 dollars so they paid. Since they did not get relief, those other counties are going to pay, as well as Yellowstone County.

**SEN. ESP** asked **Mr. Blattie** about the accuracy of how many counties had not paid.

**Mr. Blattie** believed it was accurate and thought it was less than ten.

**Closing by Sponsor:**

**REP. GILLAN** closed on the bill. She advised another bill that dealt specifically with Yellowstone County was defeated and one that dealt with Yellowstone County and six other counties that had not fulfilled their obligation also died. Regarding the existing statute 17-4-105, she noted the bill only addresses not allowing offset against an entitlement. All the other procedure that typically go on with offsetting debt remain intact. She stated she would provide committee members a copy of a letter she received about the Yellowstone County \$96,000 issue from **Scott Seacat, Legislative Auditor**. She re-emphasized she agreed to carry the bill because it was an issue all the counties are concerned about. There may be discussions about offsets in the future. The counties want to make sure it is a policy statement that the entitlement is preserved. The agreement of HB 124 is based on trust and the counties would like reassurance, as embodied in this bill, if there is a debt it will not be offset by the entitlement.

#### HEARING ON HB 471

**Sponsor:** REP. DAVE WANZENREID, HD 68, Missoula

**Proponents:**

**Opponents:**

**Opening Statement by Sponsor:**

**REP. DAVE WANZENREID, HD 68, Missoula**, advised HB 471 is an important piece of legislation in terms of institutionalizing the memory of those that have been working in and around the unnamed failed computer system across the street. Some very expensive mistakes have been made and it is only fair those legislators that follow learn from the mistakes made by prior legislative sessions. The bill proposes two different policy choices for the legislature to consider. The House passed the bill by an overwhelming margin and he hoped the committee would see fit to do the same. On page 1, line 27, the law being amended involves the Chief Information Officer in the **Office of Information Technology**. The bill proposes to clarify the duties assigned to that office when it comes to information systems. When information technology systems come through that office, that office has the added responsibility of estimating the useful life cycle of the asset being proposed to be acquired by the state. One of the things learned with the failed computer system at **Department of Revenue**, is there were bonds issued for a term longer than the life cycle of the asset. Had the asset worked, they would be paying those bonds after its useful life. In this case, the worst thing happened--the asset doesn't work and they

will be paying for an asset that doesn't work well beyond this legislative session. The bonds won't be paid off until the 2007 session. The bill proposes, on page three, starting at line seven, that bonds will not be issued for a period that exceeds the life cycle of the asset being acquired. He believed they would have done a better job with the bonds issued and the money received if that discipline had been built in. They would have known the useful life cycle would have been x number of years and would have issued bonds to recover the costs and pay them off within that life cycle. One of the lessons is this type of discipline needs to be applied. He pointed out the bill did not originate in the office whose duties are going to be expanded. He came up with the idea, **Brian Wolf** had the same kind of thoughts and they collaborated on the bill. He felt it spoke for the ability of the Executive Branch and the legislature to work together.

**Proponents' Testimony:**

**Brian Wolf, Chief Information Officer**, spoke in support of the bill. His responsibility is oversight of the IT systems in the state. The bill is good accounting policy. It requires the state, when estimating useful lives of systems with respect to the bond repayment, that it be done in a better way. They need to be cautious with what fits inside the bond repayment piece. As systems are planned, there are those areas of containment for expenses that are appropriate to a bonding circumstance and those which are not. He could not say that in all cases in the past the state had been as diligent as it should when it planned a system and estimated what would be HB 2 dollars or other areas of funding and what would be a bonding circumstance. It is his commitment, and that of his office, the director of the **Department of Administration**, and the state accountant **Cathy Muri**, to work collaboratively and with agencies as they plan systems in the future to do a better job of estimating the life cycles of systems and bringing that to a clear apex with the bonding. When looking at a bonding event, they will make sure they do a better job of planning those are in fact the most appropriate expenses to put inside the bonding event. They had discussions with the state's bonding counsel on the issue and she is supportive.

**Opponents' Testimony:** None.

**Informational Testimony:** None.

**Questions from Committee Members and Responses:**

**SEN. STONINGTON** noted they already passed a bill that **SEN. STAPLETON** carried that eliminated the unnamed computer system. She wondered about this sort of planning and commitments they may have to make in the remainder of this session with regard to bonding or any new system that might come online.

**Mr. Wolf** advised they have been proceeding with replacing the unnamed system. They are keeping the aspects of **REP. WANZENREID'S** bill in mind. As they are putting together the cost estimates associated with that system, it is going to include several pieces. They are recommending that unemployment insurance move back to the **Department of Labor**. There will be costs attendant to that organizationally and in IT systems. Some of that can and should be funded by federal dollars in a HB 4 amendment and some require HB 2 dollars. The areas most directly affected at the **Department of Revenue** are the wage base component and withholding and how to replace that. They are getting closer to knowing what those numbers will be and expect to have their best estimates within two weeks.

**SEN. LAIBLE** asked if the bondable event would include the soft costs of running parallel systems or just the hard costs of the system itself.

**Mr. Wolf** advised he spoke with **Ms. Muri** and they would be looking at the GASB rules about what is appropriate. If they are allowable and appropriate to a bonding circumstance that's where it will go. If not, it will potentially be amendments in HB 2.

**SEN. LAIBLE** asked about determining the life cycle of a system and the bonding--do they use something similar to a depreciation schedule or take a look at SABHRS and Legacy as examples.

**Mr. Wolf** advised there are some general industry rules of thumb. SABHRS is a product supported environment and a licensed piece of software bought from an external vendor and customized to fit the state's needs. That is a long-term event. SABHRS was bonded and has undergone two upgrades since it was initiated. Inside the life cycle of that bonding event, there are two version updates. They are going to be doing some additional research. **Dr. Joel Henry**, the computer science professor who assisted them on POINTS did an analysis on useful life cycles of software and they are going to be refining that life cycle estimate. Off the shelf software versus building it from the ground up each have a different life cycle. They will do their best to be conservative. The days of ten-year life cycle events on software are done, he contended. Five to seven years are probably appropriate. If it is an off the shelf product, it is not the same product in five or seven years.

**SEN. LAIBLE** asked if an annual or biannual upgrade to an off-the-shelf product would be a general fund event.

**Mr. Wolf** advised it would find itself eventually in the base of the agency as a part of their information technology spend and would normally be considered a maintenance process.

**SEN. JOHNSON** asked about the length of time of the roughly \$32 million worth of bonds that were issued.

**Mr. Wolf** advised the bonds for POINTS were ten year bonds.

**SEN. JOHNSON** asked about the interest rates.

**Mr. Wolf** said he knew at one time and would find out.

**SEN STAPLETON** thought **SEN. LAIBLE** brought up a good point and **Mr. Wolf** said they were past the era of life cycles similar to the first and second generation of computer systems. He asked if there would be any reason not to say "for a period longer than the estimated useful life of the asset, or ten years whichever is less."

**Mr. Wolf** indicated he would have no problem with that language.

**SEN. STAPLETON** thought an over-the-counter product could last twenty years and there would be a bonding obligation for twenty years. He asked for the sponsor's comment.

**REP. WANZENREID** felt the intent of the bill is to insure the terms of the bonds would not exceed the estimated life cycle of the asset. He understood the thinking about the wording. It is one of the few bills he was able to get out of the House. He was sure he could get that amendment approved.

**SEN. STAPLETON** advised his concern was his bill for the replacement system at the **Department of Revenue** has an immediate effective date and this doesn't start until July.

**REP. WANZENREID** said he and **Mr. Wolf** had conversations about that. He felt this is good policy with or without the statute. With the immediacy of the concerns, he felt they could apply this idea to the issuance of the bonds.

**Mr. Wolf** advised they were keeping this bill in mind as they look at that project and the estimates associated to it. There will be no unrealistic life cycle attached to any bond.

**Closing by Sponsor:**

**REP. WANZENREID** advised it is clear in several instances, most notably the failed system in the **Department of Revenue**, they learned some expensive lessons. They need to decide if they want to leave the lessons they learned to following legislatures. It will be a matter of time before major systems are proposed. He believed this is good public policy and found it surprising it is not in place currently. He asked for the bill to be passed and moving on to do a better job in the future.

**CHAIRMAN ZOOK** advised if some of the bills heard would be unanimous, he didn't see why they couldn't go ahead. They were short **SEN. COBB** and **SEN. TESTER** and he would rather not do that if there would be any objection.

**SEN. MCCARTHY** suggested HB 136 seemed to be a unanimous bill.

**SEN. NELSON** advised she had **SEN. TESTER'S** proxy.

**EXECUTIVE ACTION ON HB 636**

**Motion:** **SEN. MCCARTHY** moved that HB 636 BE CONCURRED IN.

**SEN. LAIBLE** asked about small communities.

**CHAIRMAN ZOOK** advised **SEN. ESP** asked about that and was satisfied with the answer.

**SEN. LAIBLE** advised his concern was it looked like it was for big communities and undue conditions for small communities.

**CHAIRMAN ZOOK** restated **SEN. ESP** was satisfied.

**Vote:** Motion carried unanimously.

**EXECUTIVE ACTION ON HB 471**

**SEN. STAPLETON** advised he would not amend the bill that was just heard because the CIO would take useful life into account. He thought it was a great bill.

**Motion/Vote:** **SEN. STAPLETON** moved that HB 471 BE CONCURRED IN.  
Motion carried unanimously.

*{Tape: 3; Side: B}*

The committee held a short informal discussion.



**SEN. JOHNSON** advised they received a copy of the memo from **Scott Seacat, Legislative Auditor**, regarding the \$96,000.

**EXHIBIT** (fcs48a05)

**ADJOURNMENT**

Adjournment: 11:00 A.M.

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SEN. TOM ZOOK, Chairman

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PRUDENCE GILDROY, Secretary

TZ/PG

**EXHIBIT (fcs48aad)**